

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CARL R. KAUFFMAN, III,
Plaintiff

v.

OFFICER DANIEL BARBAGELLO, et al.,
Defendants

:
:
: **No. 1:13-cv-00659**
:
: **(Judge Kane)**
:
:

ORDER

AND NOW, on this 5th day of December 2013, **IT IS HEREBY ORDERED THAT**
Defendants' motion to dismiss (Doc No. 12) is **GRANTED IN PART** and **DENIED IN PART**
as follows:

1. The motion is **GRANTED** to the extent it seeks to dismiss Counts III, IV, VI, and VII against all Defendants;
2. The motion is **GRANTED** to the extent it seeks to dismiss the allegations raised against Defendants Boehs and Biggins in Count V, and **DENIED** to the extent that it seeks to dismiss the allegations raised against Defendants Barbagello, Doe I, and Doe II in Count V;
3. The motion is **GRANTED** with respect to the Fourteenth Amendment due process allegations in Count II against Defendants Barbagello, Doe I, and Doe II without prejudice to Plaintiff's ability to amend;
4. The motion is **GRANTED** to the extent it seeks to dismiss the Fourteenth Amendment due process allegations in Count II against Defendants Boehs, Biggins, and Cumberland Township;
5. The motion is **GRANTED** to the extent it seeks to dismiss the Fifth Amendment due process allegations in Count II against all Defendants;
6. The motion is **DENIED** to the extent it seeks to dismiss Count I against Defendants Barbagello, Doe I, and Doe II;
7. The motion is **DENIED** to the extent it seeks to dismiss the claims against Defendant Barbagello on the basis of qualified immunity, and is **DENIED AS MOOT** to the extent it seeks to dismiss the claims against Defendants Boehs and Biggins on the basis of qualified immunity;

8. The motion is **DENIED** to the extent that it seeks to dismiss Plaintiff's prayer for punitive damages against Defendants Barbagello, Doe I, and Doe II, and is **DENIED AS MOOT** to the extent it seeks to dismiss Plaintiff's prayer for punitive damages against Defendants Boehs and Biggins; and
9. The Clerk of Court is directed to **TERMINATE** Defendants Biggins, Boehs, and Cumberland Township from this action.

S/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania